IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 6028 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO LTD - Appellant(s)
Versus
BHANABHAI SUJABHAI RAJPUT & 1 - Defendant(s)

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Appearance :

MS MEGHA JANI for Appellant(s) : 1,
MR MEHUL S SHAH for Defendant(s) : 1,
MR SURESH M SHAH for Defendant(s) : 1,
RULE SERVED for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 28/02/2007

ORAL JUDGMENT

1. The Insurance Company has preferred this appeal to challenge the order passed below Exh.1 which is an application under Section 140 of the

Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') filed in M.A.C.P. No.567 of 1995. The Motor Accident Claims Tribunal (Main), Kachchh at Bhuj, by its order dated 30.06.1999, granted the application and directed the appellant to pay Rs.25,000/- on the basis of 'No Fault Liability'. It may be noted here that respondent No.1 has not preferred the application under Section 166 of the Act. The Tribunal has held that since it was *prima facie* proved that respondent No.1 sustained serious injuries in a vehicular accident, which took place on 12.12.1994, and suffered permanent partial disability, he was entitled to interim compensation under Section 140 of the Act. Hence, the aforesaid award has been passed.

2. Before the Tribunal as well as before this Court, the appellant has raised only one contention that without application under Section 166 of the Act, respondent No.1 could not have filed application under Section 140 of the Act and get it decided. This issue stands covered by

the full bench decision of this Court rendered in the case of **United India Insurance Company Ltd. V/s. Kadviben Udabhai Rathwa and another** reported in **2006(2) GLH 106** wherein this Court has held as under:-

> “24. Having taken the bull by horns, conclusions irresistible may be summarized. Section 140 (Chapter X) provides for fixed sum of compensation in cases of no fault liability. It is independent of Section 161 (payment of compensation in cases of hit and run motor accidents), Section 163-A (payment of compensation on structured formula basis/ fault liability-Chapter XI) and Section 166 (fault liability – Chapter XII). Application for compensation under Section 140 is maintainable without there being application for compensation under Section 163-A or under Section 166 and disposable accordingly, and compensation awarded shall be final. But, where two applications are filed under Sections 140 and 163-A or under Section 140 and under Section 166, compensation awarded under Section 140 shall be reduced from the amount of compensation awarded under Section 163-A or under Section 166 provided the compensation awarded under the latter

provisions are higher, otherwise, compensation paid under Section 140 would be final. Further, where claim is preferred only under Section 140 and not any other provision, compensation awarded under Section 140 shall be final. Section 140 does not provide for interim/ad hoc compensation because compensation paid under this Section is final. 'Interim/ad hoc compensation' is used when apart from application under Section 140 there is also application under Section 163-A or under Section 166, since the amount of compensation paid under Section 140 is made deductible. Where in addition to application for compensation under Section 140 there is application under other provisions on principle of fault liability, application under Section 140 shall be disposed of in the first place, since expeditious disposal of application under Section 140 is the basic theme of this beneficial piece of legislation. But, where claimant has filed application under Section 140, but not under any other provision claiming compensation on fault liability principle, application is maintainable and compensation awardable, but not recoverable from the claimant. The insurance company is not entitled to seek trial on merit of any legal defences available to it under Section

149(2) of the Act.”

3. In the instant case, respondent No.1 had preferred application under Section 163(A) of the Act, but that was also subsequently withdrawn and he proceeded only with application under Section 140 of the Act. But, considering the aforesaid ratio, respondent No.1 was legally justified in prosecuting the said application and it was maintainable under the law. Hence, this appeal has no merits and it is dismissed with cost.

(AKSHAY H.MEHTA, J.)

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